

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**IN THE ESTATE OF: NORMA JEAN MEYER, DECEASED, DUSTIN MEYER,
PERSONAL REPRESENTATIVE,
APPELLANT**

vs.

**ROBERT S. PRESLEY, TRUSTEE OF THE NORMA J. MEYER REVOCABLE LIVING
TRUST AGREEMENT, AND ROBERT S. PRESLER, A/K/A ROBERT S. PRESLER,
A/K/A TOMMY EARL RICHARDSON,
RESPONDENT**

DOCKET NUMBER WD77903

DATE: SEPTEMBER 8, 2015

Appeal from:

The Circuit Court of Cass County, Missouri
The Honorable William B. Collins, Judge

Appellate Judges:

Before Division One: Cynthia L. Martin, P.J., Joseph M. Ellis, J. and James E. Welsh, J.

Attorneys:

Harold A. Walther, for Appellant

Benjamin S. Faber, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

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RICHARDSON, RESPONDENT**

WD77903

Cooper County, Missouri

Before Division One Judges: Cynthia L. Martin, P.J., Joseph M. Ellis, J. and James E. Welsh, J.

Dustin Meyer, acting in his capacity as personal representative for the Estate of Norma J. Meyer, appeals from a judgment entered in the Circuit Court of Cooper County declaring that the assets of the Norma J. Meyer Revocable Living Trust were not assets of the Estate of Norma J. Meyer. The trial court rejected Appellant's arguments that the 2005 Trust had been created as a result of undue influence on the part of Tommy Richardson or, in the alternative, that the Trust had been terminated by Norma J. Meyer prior to her death. The Trust at issue left a significant amount of property to Richardson, with whom Norma had lived in a romantic relationship between 2001 and May 2006 but with whom she had not had any further contact prior to her death on August 26, 2011.

AFFIRMED.

Division One holds:

- (1) Because Norma's Trust provided that the Trust could only be revoked "by instrument in writing executed by Settlor and delivered to the Trustee," in order to revoke the Trust, Norma was required to (1) execute a written instrument revoking the trust and (2) deliver that written instrument to the Trustee.
- (2) Where, as here, the settlor reserves a power to modify the trust only in a particular manner or under particular circumstances, he or she can modify the trust only in that manner or under those circumstances.
- (3) Norma's 2009 Will did not mention her 2005 Trust and did not specifically reference any property held by the Trust. It merely, in general terms, divided

the property owned by Norma at the time of her death on a percentage basis between two of her children.

- (4) As conceded by Appellant, no written instrument was in evidence in which Norma explicitly revoked her 2005 Trust.
- (5) While the requirement of delivery of the written instrument by the settlor to the trustee may be for the trustee's benefit and might arguably be waivable by the trustee under certain circumstances, the other requirements for revocation are most certainly not waivable and must be satisfied to effectuate the revocation of a trust.
- (6) Appellant's argument that comments made to her attorney that she wanted her 2009 Will to leave "everything" to the two named children constituted an effective waiver of the written instrument requirement of the 2005 Trust is wholly without merit. The requirement that any amendment to or revocation of the trust be effectuated through a written instrument executed by the settlor protects the integrity of the trust, operating similarly to the Statute of Frauds and insuring that challenges like the present one, attempting to avoid and/or alter the provisions of the Trust through the use of parol evidence and hearsay, are precluded.
- (7) In a court-tried case, the court need not specifically evaluate whether the contestant met the elements giving rise to a presumption of undue influence, but rather must only determine the ultimate question of fact: whether the trust was the result of undue influence that deprived the settlor of his or her free agency. Therefore, where the trial court has made a factual finding regarding undue influence in a court-tried case, this Court's task is limited to reviewing the trial court's ultimate conclusion according to our standard of review, simply determining whether it is supported by substantial evidence and/or is against the weight of the evidence.
- (8) When properly viewed in accordance with the standard of review, the trial court's finding that Appellant failed to prove undue influence is clearly not against the weight of the evidence. The testimony of the attorney who drafted the Trust for Norma reflected that he took direction only from her and that Richardson was not present when she was instructing him. He further testified that he never had any reason to doubt Norma's competence or intelligence and never thought that she was under the influence of any third party with regard to making decisions related to the Trust. Richardson testified that he had never forced or compelled Norma to do anything with regard to the Trust and that he was not even aware she was creating a Trust until after she had a meeting with her attorney about it at their ranch. The trial court was entitled to believe the testimony of Richardson and the attorney and to find the evidence did not establish that Richardson had asserted any undue influence over Norma in the creation of the Trust.

(9) The trial court was not required to believe or assign significant weight to contrary testimony and evidence relied upon by Appellant.

Opinion by Joseph M. Ellis, Judge

Date: SEPTEMBER 8, 2015

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